May 2022

Administrative Appeal Decision - Georgiou, Christos (2019-04-15)

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Georgiou, Christos **Facility:** Fishkill CF

NYSID: [redacted] **Appeal Control No.:** 06-008-18 B

DIN: 03-A-1539

Appearances: Joseph Petito, Esq.
2 Austin Court
Poughkeepsie, New York 12603

Decision appealed: May 2018 decision, denying discretionary release and imposing a hold of 15 months.

Board Member(s) who participated: Crangle, Cruse, Davis

Papers considered: Appellant's Brief received January 23, 2019

Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

_____ ___ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____
Commissioner

_____ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____
Commissioner

_____ ✓ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____
Commissioner

If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 4/15/19 GG.

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Appellant challenges the May 2018 determination of the Board, denying release and imposing a 15-month hold.

The issues raised by Appellant are as follows: (1) the Board's decision was arbitrary and capricious and unlawful, placing too much weight on Appellant's three prior felony convictions, with insufficient consideration given to his rehabilitative efforts, certain COMPAS scores, and "positive accomplishments"; (2) the Board's decision was made in violation of Appellant's due process rights; (3) the Board's decision was conclusory and lacked sufficient detail; (4) the Board's decision was tantamount to a resentencing of Appellant; (5) the 15-month hold imposed by the Board following the interview was excessive; (6) the Board interview was too short in duration; (7) the Board did not provide Appellant with guidance as to how to improve his chances for parole release; (8) the Board has a secret policy of denying parole to violent felons; and (9) the Board failed to consider its own "cultural values" and Appellant's "co-defendant status".

As a preliminary matter, Appellant's attorney refers to Appellant throughout his brief as "Petitioner", which is incorrect. This is an administrative appeal and the inmate is properly referred to as "Appellant". Appellant's attorney also refers to three separate provisions contained in 9 NYCRR §8001.3 relating to guidelines. However, that section of the regulations was repealed several years ago. These errors were brought to Appellant's attention by the Appeals Unit several months ago and, once again, the Appeals Unit implores the attorney to address these corrections in any future submissions.

As to the first issue, discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). "Although these standards are no longer repeated in the [Board's] regulation, this in no way modifies the statutory mandate requiring their application." Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. A conclusion that an inmate fails to satisfy **any one** of the considerations set forth in Executive Law § 259-i(2)(c)(A) is an independent basis to deny parole. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000); Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386 (4th Dept. 2014); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268; Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

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Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). While consideration of these factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon v. Travis, 95 N.Y.2d 470, 477. Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board's discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17. In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128.

In 2011, the law was amended to require procedures incorporating risk and needs principles to "assist" the Board in making parole release decisions. Executive Law § 259–c(4); 9 N.Y.C.R.R. §8002.2(a). The Board satisfies this requirement in part by using the COMPAS instrument. Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); see also Matter of Hawthorne v. Stanford, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); Matter of LeGeros v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each inmate by considering the statutory factors including the instant offense. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. See Executive Law § 259-i(2)(c)(A). Thus, the COMPAS instrument cannot mandate a particular result. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether the three standards are satisfied. See Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017). Furthermore, declining to afford

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the COMPAS controlling weight does not violate the 2011 amendments. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016).

As to the second issue, an inmate has no Constitutional right to be released on parole before expiration of a valid sentence as a person's liberty interest is extinguished upon conviction. Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 99 S. Ct. 2100, 2104 (1979); Matter of Russo v. Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980); Matter of Vineski v. Travis, 244 A.D.2d 737, 664 N.Y.S.2d 391 (3d Dept. 1997). The New York State parole scheme "holds out no more than a possibility of parole" and thus does not create a protected liberty interest implicating the due process clause. Matter of Russo, 50 N.Y.2d at 75-76, 427 N.Y.S.2d at 985; see also Barna v. Travis, 239 F.3d 169, 171 (2d Cir. 2001); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005).

As to the third issue, the Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

As to the fourth issue, Appellant's assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. See Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). Appellant has not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

As to the fifth issue, the Board has discretion to hold an inmate for a period of up to 24 months. Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(b); Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 737 N.Y.S.2d 163 (3d Dept. 2002), lv. denied, 98 N.Y.2d 604, 746 N.Y.S.2d 278 (2002); Matter of Campbell v. Evans, 106 A.D.3d 1363, 965 N.Y.S.2d 672 (3d Dept. 2013). Therefore, the hold of 15 months was not excessive or improper.

As to the sixth issue, Appellant was provided the opportunity to discuss with the Board

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during the interview any issues of interest, and cannot now be heard to complain that certain issues were not discussed, or the extent to which certain issues were discussed. See Matter of Serna v. New York State Division of Parole, 279 A.D.2d 684, 719 N.Y.S. 2d 166 (3d Dept. 2001); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997).

As to the seventh issue, the Board is not required to state what an inmate should do to improve his chances for parole in the future. Matter of Francis v. New York State Div. of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005); Matter of Partee v. Evans, 40 Misc.3d 896, 969 N.Y.S.2d 733 (Sup. Ct. Albany Co. 2013), aff'd, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014), lv. denied, 24 N.Y.3d 901, 995 N.Y.S.2d 710 (2014).

As to the eighth issue, there is no merit to the claim that the Board decision was predetermined based on an alleged executive policy to deny parole to violent felony offenders. Allegations that the Board has systematically denied parole to prisoners convicted of violent crimes have been dismissed repeatedly by the Courts. See, e.g., Matter of Cartagena v. Alexander, 64 A.D.3d 841, 882 N.Y.S.2d 735 (3d Dept. 2009); Matter of Motti v. Dennison, 38 A.D.3d 1030, 831 N.Y.S.2d 298 (3d Dept. 2008); Matter of Cardenales v. Dennison, 37 A.D.3d 371, 830 N.Y.S.2d 152 (1st Dept. 2007); Matter of Wood v. Dennison, 25 A.D.3d 1056, 1057, 807 N.Y.S.2d 480, 481 (3d Dept. 2006); Matter of Ameyda v. Travis, 21 A.D.3d 1200, 800 N.Y.S.2d (3d Dept. 2005), lv. denied, 6 N.Y.3d 703, 811 N.Y.S.2d 335 (2006); Matter of Bottom v. Travis, 5 A.D.3d 1027, 773 N.Y.S.2d 717 (4th Dept.), appeal dismissed 2 N.Y.3d 822, 781 N.Y.S.2d 285 (2004); Matter of Lue-Shing v. Pataki, 301 A.D.2d 827, 828, 754 N.Y.S.2d 96, 97 (3d Dept. 2003), lv. denied, 99 N.Y.2d 511, 760 N.Y.S.2d 102 (2003).

As to the ninth issue, Appellant fails to articulate what the Board did not consider regarding Appellant's "co-defendant status". Similarly, Appellant does not articulate what "cultural values" are demonstrated by the Board, and what impact this had on the Board's decision. Certainly there is no legal authority of any kind advanced to support these "issues".

Recommendation: Affirm.